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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Michael J. Wang,	X	
	:	
Plaintiff,	:	C.A. No. 2:05-CV-01861 (JS)
	:	
v.	:	<u>Electronically Filed</u>
	:	
United States Medical Licensing Examination	:	
Secretariat	:	
	:	
Defendant.	:	

**RESPONSE TO PLAINTIFF’S “MOTION FOR
RE-OPEN CASE AND IMPOSE SANCTION”**

The National Board of Medical Examiners (“NBME”) and the Federation of State Medical Boards (“FSMB”), the cosponsoring entities of the United States Medical Licensing Examination (“USMLE”), by and through their counsel, Morgan, Lewis & Bockius LLP, hereby appear before this Court for the limited purpose of opposing Plaintiff’s motion currently pending before this Honorable Court.¹

Plaintiff has captioned his motion as a “Motion for Re-Open Case and Impose Sanction.”

Based on its substance, however, the motion appears to seek reconsideration of this Court’s

¹ NBME and FSMB have not been named as defendants or entered appearances in this matter; rather, for the sake of judicial economy, they appeared through counsel for the limited purpose of contesting jurisdiction in this matter through a motion to dismiss filed May 10, 2005. Similarly, NBME and FSMB are not entering appearances at this time, but instead appear through counsel for the limited purpose of opposing Plaintiff’s present motion to re-open, filed October 9, 2007.

February 23, 2006 ruling dismissing Plaintiff's action.² Plaintiff's motion should be denied for the following reasons:

1. This matter has been finally resolved. On February 23, 2006, this court issued an order dismissing this case *with prejudice* on the grounds that USMLE lacked the capacity to be sued. The Second Circuit affirmed the Court's decision. (*See* United States Court of Appeals for the Second Circuit Mandate, attached as Exhibit A to the Declaration of Julia Nicole Miller ("Miller Declaration"). Further, the United States Supreme Court denied Plaintiff's Petition for Writ of Certiorari in this matter. (*See* U.S. Supreme Court denial of petition for writ of certiorari, attached as Exhibit B to the Miller Declaration). Accordingly, this matter has been fully decided and the case is closed.

2. Under any circumstances, Plaintiff's motion is untimely. If, in fact, his motion is one for reconsideration, Federal Rule of Civil Procedure 59(e) and Local Rule 6.3 provide that such a motion must be brought within 10 days after entry of the ruling. The February 23, 2006 ruling which Plaintiff urges the Court to vacate was issued 20 months ago. Were the Court to consider Plaintiff's motion as one for relief from judgment or order under Federal Rule of Civil Procedure 60(b), it would still be untimely because Rule 60(b) provides that such a motion be filed within one (1) year of the entry of judgment.

3. None of the arguments raised in Plaintiff's motion are relevant to the matter against USMLE. Plaintiff's grounds for reconsideration involve purported statements by counsel representing the State University of New York Health Sciences Center at Stony Brook, Peter Glass and Frederick Schiavone, which and who are not parties to this action.

² Plaintiff has filed his motion in two separate actions: this case (*Wang v. United States Medical Licensing Examination Secretariat*, case number 05-CV-01861); and *Wang v. Stony Brook University Hospital, Peter Glass, Frederick Schiavone, et al.*, case number 02-CV-05840. NBME and FSMB file this opposition only with respect to this case, the only one in which USMLE was named.

WHEREFORE, NBME and FSMB respectfully submit that Plaintiff's motion should be denied.

Dated: October 23, 2007

s/Julia Nicole Miller

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